

Title	Habeas Corpus: Procedure in the Superior Courts (amend rule 4.551 and approve form CR-175, <i>Notice and Request for Ruling</i>)
Summary	The proposed amendments to rule 4.551 would change procedures when the superior court has not ruled on a petition for writ of habeas corpus within the proscribed time period, as well as increase the time period for the court to rule.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688
Discussion	<p>Under current rule 4.551, if the court has not ruled on a petition for writ of habeas corpus within 30 days of filing, the petition is deemed granted, invoking several procedural requirements (including appointment of counsel and the filing of a return by the prosecution). Yet the legal basis for granting the petition has not been found and there is no notification to the parties that the petition has been granted.</p> <p>The proposed amendments would create a new procedure allowing the petitioner would notify the court and request a ruling in cases where a timely ruling has not been made. The proposal would also increase the time the court has to decide the petition. Specifically, the amendments to rule 4.551 would:</p> <ul style="list-style-type: none"> • Provide that the court must rule within 60 days of the filing of the petition, instead of the current 30-day time period; • Allow for a Notice and Request for Ruling procedure by which the petitioner, after the 60 days has passed without a ruling from the court, could request a ruling; • Provide that, upon filing of the notice, the presiding judge of the court must calendar the matter for a decision within 30 days if a timely ruling has not been entered; • Allow the presiding judge to assign the case to another judge for decision; • Provide that the parties are not required to appear for the ruling on the petition; and

- Allow the court to take the matter off calendar if a ruling is entered prior to the calendar date.

The proposal also includes a new optional form to request the court's ruling, the CR-175, *Notice and Request for Ruling*.

Additionally, an advisory committee comment would be added to clarify the authority for appointing counsel if an order to show cause has been issued.

Attachments

Rule 4.551 of the California Rules of Court would be amended, effective January 1, 2004, to read:

Rule 4.551 Habeas corpus proceedings

(a) [Petition; form and court ruling]

(1)–(2) * * *

(3) (A) Upon filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within 30~~60~~ days after the petition is filed. ~~If the court fails to rule on the petition for writ of habeas corpus within 30 days of its filing, an order to show cause will be deemed to have issued under subdivision (c).~~

(B) If the court fails to rule on the petition within 60 days of filing, the petitioner may file a Notice and Request for Ruling.

(i) The petitioner's Notice and Request for Ruling must include a declaration stating the date the petition was filed, the date of the Notice and Request for Ruling, and that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the Notice and Request for Ruling.

(ii) If the Presiding Judge or his or her designee determines the notice is complete and the court has failed to rule, the presiding judge, or his or her designee, must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the Notice and Request for Ruling. If the judge assigned by the presiding judge rules on the petition prior to the date the petition is calendared for decision, the matter may be taken off calendar.

(4)–(5) * * *

(b)–(c) * * *

1 (d) [Return] If an order to show cause is issued as provided in subdivision
2 (c), ~~or if the court fails to rule on the petition in a timely manner as~~
3 ~~required in subdivision (a)(3)~~, the respondent may, within 30 days
4 thereafter, file a return. Any material allegation of the petition not
5 controverted by the return is deemed admitted for purposes of the
6 proceeding. The return must comply with Penal Code section 1480 and
7 must be served on the petitioner.
8

9 (e)–(h) * * *

10
11 **Advisory Committee Comment**
12

13 The court must appoint counsel upon the issuance of an order to show cause.
14 (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62
15 Cal.2d 226, 231-232.) The court of appeal has held that under Penal Code
16 section 987.2, counties bear the expense of appointed counsel in a habeas
17 corpus proceeding challenging the underlining conviction. (*Charlton v.*
18 *Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2,
19 authorizes appointment of the public defender, or private counsel if there is
20 no public defender available, for indigents in criminal proceedings.

I, _____, filed a petition for writ of habeas corpus in the above entitled case in the Superior Court of California, County of _____ on _____ (date). I have not received a ruling on the petition as of the date of this declaration and therefore request the court to rule on the petition as prescribed by rule 4.551(a)(3)(B) of the California Rules of Court. A copy of the original petition for writ of habeas corpus is attached to this Notice and Request.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(Type or print name)

(Signature)